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Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable JIM DEMINT, a Senator from the State of South Carolina.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, who is slow to anger, You are loving and patient beyond our ability to measure or understand.

Today, bless the Members of this body. Give them direction for their work, motivation for their deeds, and forgiveness for their mistakes. Help them to develop a sense of dependence on You. Temper their talents with wisdom, and give them the ability to see the power of cooperation and unity. Discipline their compassion and channel their zeal that they may do Your will.

We pray in Your mighty Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JIM DEMINT led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 25, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JIM DEMINT, a Sen-

ator from the State of South Carolina, to perform the duties of the Chair.

TED STEVENS,

President pro tempore.

Mr. DEMINT assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will return to executive session for the consideration of the nomination of Jerome Holmes to be U.S. circuit judge for the Tenth Circuit. There are 2 hours remaining for debate on this judicial nomination, and therefore, if all that time is necessary, we will vote just before 12 noon today. We will be recessing from 12:30 to 2:15 today to allow for our weekly policy meetings. When we resume business at 2:15, we will begin consideration of the child custody protection bill under an agreement that we reached last Friday. There are up to four amendments that can be considered before we proceed to passage of that bill. We will stay in session this afternoon and evening in order to finish the child custody protection bill, and I hope some of that debate time will be yielded so we can finish that bill at an earlier hour.

I remind everyone again that there will be a cloture vote on the motion to proceed to the consideration of the Gulf of Mexico Energy Security Act tomorrow morning. That vote will occur sometime around 10 a.m. so that we can conclude that vote before we go to the scheduled joint meeting. We will proceed to the House of Representatives in order to hear the 11 a.m. address by Prime Minister Nuri al-Maliki of Iraq.

The vote will be sometime around 10 a.m. tomorrow, and a little after that

we will convene here in preparation for going to the House of Representatives.

We have had a very productive few weeks since the Fourth of July, addressing the issues surrounding the alternative stem cell technology bill, the fetal farming prohibition bill, the child protection bill, Homeland Security appropriations, the Voting Rights Act reauthorization, the Water Resources Development Act, and confirmed four judges.

We have made great progress over the last few weeks, but we have a lot to do—most immediately the Child Custody Protection Act—today, and then we will move to the deep sea energy exploration issue. Pensions is currently on the way to conference, and I am very hopeful that the conference will be completed at some point in the near future. And we need to address the DOD appropriations bill. So these are very busy times.

The House of Representatives will be going out this week, and we will be here through next week before the recess.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF JEROME A. HOLMES TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of Calendar No. 764, which the clerk will report.

The legislative clerk read the nomination of Jerome A. Holmes, of Oklahoma, to be United States Circuit Judge for the Tenth Circuit.

The ACTING PRESIDENT pro tempore. There will be 2 hours of debate equally divided between the Senator from Pennsylvania, Mr. SPECTER, and

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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the Senator from Vermont, Mr. LEAHY, or their designees.

The Senator from Illinois.

Mr. DURBIN. Mr. President, before the Senate this moment is the nomination of Mr. Holmes to be a judge in the Federal court system. I see the Senator from Oklahoma is here. I am sure he will speak to this nomination. I am not going to address the nomination but put a statement in the RECORD relative to my vote, which will be in opposition to Mr. Holmes.

I have reviewed his record, as many members of the Senate Judiciary Committee have, and there are many positive things to be said, as the Senator from Oklahoma has mentioned in our committee deliberations. I am concerned, though, about some of the statements that have been made by Mr. Holmes in relation to his nomination on the issue of affirmative action. I am concerned about whether he will truly come to this important lifetime appointment with the type of objectivity and open mind that we hope for when we give people this opportunity to serve their Nation.

I am also concerned that the Leadership Conference on Civil Rights yesterday made it clear that they oppose his nomination. It is an important factor, in my judgment, in my decision, and I am sorry that I will not be able to support this nomination as a result of that.

I also want to make it clear that the job of a Federal judge is a very important one. It relates to issues that affect us every single day. Just last week we had an extensive debate on the floor of the Senate about stem cell research—those issues relative to life and death in medical research that come before the courts. Judges have to make decisions. I have no idea what Mr. Holmes's position is on this issue. I don't know what statements he has made relative to it. What I am about to say does not reflect on him at all.

But I do want to say I am very concerned about what I read in this morning's newspaper about stem cell research. We know what happened last week. President Bush used his first Presidential veto to stop medical research—the first time in the history of the United States that a President has made a decision that we will stop Federal funding of medical research. He made that decision 5 years ago and said that no Federal funds would go to the use of these embryonic stem cells.

We know how these stem cells are created. They are created in a perfectly legal medical process where a man and a woman having difficulty in conceiving a child expend great sums of money, effort, and anguish to try to create this new baby in a petri dish, a glass dish, in vitro in glass. It is the fertilization process in the laboratory that usually takes place between a man and a woman in their married life. It is a miracle that it works, that this process leads to human life and people who have been praying for a baby fi-

nally have that moment when they are told, yes, it worked, in vitro fertilization worked, and you are going to have that baby you dreamed of and love the rest of your life.

But in the process, there are created other embryos which are not used. One is used to impregnate the woman. The others are left open, extra, surplus. What happens to them? They can be preserved at extreme cold temperatures for long periods of time. But, ultimately, if they are never used by the couple, they are thrown away. They are discarded.

The question we had before us was, Is it better to take those embryonic stem cells that would be cast away and discarded and use them for medical research to find cures for diabetes, Parkinson's, Alzheimer's and Lou Gehrig's Disease? Is it better to use them for that purpose?

That was the vote. And it was a bipartisan vote, 44 Democrats and 19 Republican Senators. Sixty-three voted in favor of stem cell research, reflecting America's feelings. Seventy percent of American people say we should go forward with this research; that these embryonic stem cells that will be thrown away, it is far better to use them to find cures to relieve human suffering.

That is what most Americans believe. That is what a bipartisan majority of the Senate believed. The magic number in the Senate is not 63 when it comes to this issue. The important number is 67. Why? That is the number of Senators it would take to override a Presidential veto, a veto of the stem cell research bill. We fell four votes short.

It became an operative issue when the President of the United States decided to use his first Presidential veto to stop this medical research.

On Saturday, I went back to Chicago. I met with a group of people. I wish the President could have been there. I wish he could have been standing with me out there in Federal Plaza by the Federal Building. I wish he could have walked over to the wheelchair of Danny Pedroza, who is suffering from a terrible neurological anomaly which has created a burden I can hardly describe on his parents to keep him alive. I wish the President could have heard his mother say: Every morning when I walk into his bedroom, before I approach him, I look to see if he is breathing. That is the struggle which she will face every single day. All she wants the President to consider is the fact that this research may give her little boy or other little boys and girls who face that a chance.

I wish the President could have been there to see the victims of Parkinson's, slightly embarrassed by the tremors which come, and stand before the microphones and talk about their lives today.

I wish he could have been there to meet the mother of this beautiful little girl who suffers from juvenile diabetes. Her mother—I know her well by now,

and I will not use her name on the Senate floor; I have used it before—gets up every night twice in the middle of the night to go over and take a blood sample from her daughter to make sure there is no imbalance. Every night, twice a night. Think about that for a moment.

I wish the President could have been there to see the Lou Gehrig's disease victim that I saw at a round-table meeting in Chicago a few months ago. He looked like a picture of health and strength. Here was a man who was sitting in a wheelchair, immobile. He couldn't move any of his limbs. He couldn't speak. His wife spoke for him and talked about how stem cell research was their last prayer; that maybe, just maybe, it could help him but certainly help others. As she spoke, he sat in the wheelchair with tears coming down his cheeks.

You think to yourself: Mr. President, these are real life stories. These are people who get up every single day and night in their battle. These are mothers and fathers whose lives have changed dramatically and will never be the same because of their love for their child or that husband or that wife. These are people who counted on you to sign this bill, to give them a chance.

What do we learn this morning? We learn that there was a little apology from the White House about the language that was used about the stem cell veto. I would like to read some of this into the RECORD because I think it really reflects on what we were considering on the floor of the Senate last week.

This article in this morning's Washington Post says:

President Bush does not consider stem cell research using human embryos to be murder, the White House said yesterday. Reversing its description of its position just days after he vetoed legislation to lift Federal funding restrictions on the hotly disputed area of study, White House Press Secretary Tony Snow said yesterday that he "overstated the President's position."

It went on to say the President rejected the stem cell research bill "because he does have objections with spending Federal money on something that is morally objectionable to many Americans."

So the standard now is not that the President vetoed the bill because using these embryonic stem cells is somehow taking human life or murder. No. The standard is, according to Mr. Snow speaking for the President, that this is an issue that is "morally objectionable to many Americans."

We know that 70 percent of Americans support stem cell research. We know that on any given issue, whether it is the war in Iraq, or virtually any expenditure of Federal funds on a controversial issue, there will be many Americans who object to it and oppose it. The President is now saying he is not going to the heart of the issue as to whether this process is immoral; rather, he is saying it was politically unpopular and objectionable to many Americans.

It wasn't objectionable to the families of the victims I met with on Saturday. What was objectionable was the President's veto. What was objectionable is the fact that he would turn his back on this opportunity for medical research.

When the President vetoed this bill, he had with him what are known as snowflake babies. I met some of them, the most beautiful kids you can imagine. These so-called snowflake babies are beautiful little children. They were outside in the lobby. These were children who were once these frozen embryos we talked about, and now are babies, smiling, gurgling, jumping up and down. The President had many of them with him at his veto of the stem cell research bill.

I think the total number of these babies in America is about 200. It is an amazing act of love and courage for these families who want a baby so badly they will go to the expense of this process. I am sure these children will be loved the rest of their lives. They are lucky kids. We are lucky to have them on this Earth. There are 400,000 frozen embryos. It is not likely there will be so many families coming forward to adopt or to create the life through a frozen embryo.

The answer to the President is this: There is room for both. We can use embryos to create life for the couple who comes to the laboratory, for those who want to adopt the embryo. There is ample opportunity for that. But there is also an opportunity to use these embryonic stem cells to save lives and to spare people from suffering. That is the point the President missed. That is what this election is all about.

Last week, the House and the Senate voted on embryonic stem cell research. The next vote on the issue will be on November 7. That is when the American people will vote on stem cell research. That is when they will have a chance to decide whether they want different leadership in this Congress. That is when they will have a chance to decide whether they want to give the Senate the four more votes we need to override President Bush's veto. That is when they have to decide whether we can bring this issue up after the 1st of next year, pass it in the House and Senate and, if the President persists in his veto position, override that veto in the House and the Senate.

That is what elections are all about. That is what this Government is about. That is why it is important, for those who follow the stem cell research debate, to understand it is not over. It has just begun. We will continue the battle to fight for stem cell research. We will do it on a bipartisan basis. We will try to find the Senators on both sides of the aisle who support it. We beg those across America who think it is important to move forward on stem cell research to understand now it is in their hands. On November 7, across America, in congressional elections for the House and the Senate, voters have

a chance to ask the candidates: Where do you stand on this? How will you vote? Will you vote to override another veto by President Bush if it is forthcoming? That is what the process is all about.

Today we debate a Federal judge. As I said, my remarks are not meant to reflect on him personally at all because I don't know his position on this issue nor would I even presume it at this moment in time. But it is to put into context the decisions we make in the Senate, not just on judges but on issues that affect real lives in America. Sadly, this Senate has been derailed and diverted from the important issues people care about. Do you know what issue we are going to next? After this judicial nominee, we are going to be embroiled, at least for hours—and I hope that is all we take of the time of the Senate on an issue that is so peripheral it has never ever been raised to me by anyone in the State of Illinois—on a question about people who would transport their children or young people across a State line for an abortion situation, a tragic decision to be made, for sure, but we are going to take up the time of the Senate to deal with that when, in fact, there is no controversy or issue that has been brought to my attention by anyone in my State about this matter.

What else could we be doing in the Senate? How about something on gasoline prices for Americans who are now facing \$3 a gallon, gasoline that might go to \$4 a gallon if we are not careful? How about a national energy policy? Wouldn't that be a good debate in the Senate? Wouldn't it be worth our time to spend a few moments changing the Tax Code to help ordinary families pay for college education expenses for their kids? Think about students making it into good schools and graduating with a mountain of debt. Wouldn't it be interesting if the Senate found time to debate ways to help those families with tax deductions? Wouldn't that be time well spent? Or perhaps a little time talking about health insurance? Forty-six million Americans have no health insurance and this Senate does not want to take up an issue to offer American businesses the same kind of health insurance that is available for Members of Congress. Why aren't we considering that? Shouldn't we be considering the minimum wage across America? It has been 9 years since we have increased the minimum wage—it is \$5.15 an hour—and during that same period of time, Members of Congress have voted themselves an increase in salaries of \$31,000. For 9 years we have said to the hardest working, lowest paid Americans, you get no pay raise. That has been our position. Shouldn't we change it? Shouldn't we take the position the Democrats have taken, if we can't raise the minimum wage, we are not going to increase congressional pay, period? Shouldn't we also be considering legislation that deals with some of the serious problems facing

people with pensions across America who work for a lifetime with the promise that they will be taken care of, yet when they finally reach their golden years they find out that through some corporate sleight of hand or a merger or bankruptcy, they are left holding the bag? Why don't we do something to help those families? Or change the Tax Code that rewards companies that send jobs overseas? Why would we reward an American company with a tax break for exporting jobs? Why don't we consider any of those issues I have just listed as a priority?

No, what we are doing is dwelling on this debate relative to those extreme narrow issues that appeal to the base of the Republican Party vote. We went through Constitutional Amendment Month—that was June—where we said we are going to address a major problem across America, that is flag burning, but it turns out there have only been a handful of instances in America in the last year. Has anyone even reported to have burned a flag in this country? And we decided we are going to change the Bill of Rights because of our concern over this major, dominant issue?

Then, of course, the issue of gay marriage, a divisive issue. To think we want to amend the Constitution—thank goodness they could not even rally a majority of 100 Senators to vote for that constitutional amendment which was clearly a political experiment, a political project by the Republican side.

We cannot seem to find the time to get to the real issues of an energy policy, a health care policy, doing something about paying for college expenses for families. We cannot find the time for that. No, we have to go after these divisive issues relative to abortion and other matters such as that. That is the agenda and those are the priorities of the Republican leadership in the Senate.

It is the reason why an overwhelming majority of Americans have said, it is time for a change in Washington. They have taken a look at this Republican Congress and they say it is time for a significant change, to move us back toward an agenda that truly will make a difference and move this country in a new direction.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tem. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COBURN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tem. Without objection, it is so ordered.

Mr. COBURN. Mr. President, I don't know quite where to begin. If you are sitting out in America today and you heard what you just heard, what you heard was, I am going to point out how bad you are. Here is what is wrong, here is the choice. What you heard was

a partisan rant about the situation we find ourselves in today rather than a constructive hand that says, let's work together to get things done.

We heard a debate about stem cells so it could be used politically. We heard a lot of words that were interchanged, stem cells versus embryonic stem cells. We heard words that President Bush does not care about people with illnesses, Republicans do not care about people with illnesses. We heard words that 70 percent of Americans support stem cell research. The fact is when you as Americans are asked, do you think your taxpayer dollars ought to be used to destroy embryos for embryonic research, that number changes to 38 percent.

Half truths are just that. The time we are supposed to be using is on the nomination of a great American by the name of Jerome Holmes. What we saw is, Members are going to vote against him because they have a litmus test. That is what is going to drive our country farther apart rather than bring us together. If you don't match up and you don't pass the litmus test, then you can't be voted for.

The problem is, that works both ways. If the Senate is going to change its approach to judicial nominees, and you have to match either a liberal or conservative dogma, what will happen to our courts? What will happen to our country?

The fact is Jerome Holmes is a man of absolute character, impeccable credentials, and has integrity that nobody questions. Except by a sleight of hand and backhanded inference that he doesn't care about minorities, even though he is African American, he does not care about minorities because he happens to have published a difference of opinion on the legal basis for affirmative action, that is the litmus test. That is why he is not going to be voted on.

Here is a man who grew up in less than ideal circumstances, graduated cum laude, went to Georgetown University, has advanced degrees from Harvard, has been a prosecutor, has been a defender, has been an advocate for those who are less fortunate, and will be the first African American ever to be on the Tenth Circuit Court of Appeals.

Yet as we heard, he measures up in everything except one thing: He doesn't buy into what some want him to buy into on one issue. Who better to question his own opinion—not his legal opinion but his own personal opinion? Is it the fact that you can't have a personal opinion about anything and become a judge in this country? How would we know anything about them?

It takes great courage for an African American, a lawyer, to say, I think there are some things that are wrong with the affirmative action plan.

He did not say: I don't think we should have equality. He did not say: I don't think we should make up for past deeds that have not been rectified.

What he said was: Here is what the Supreme Court did. I think they should have gone a little further. And on that basis alone he does not meet the absolute litmus test that is going to be required.

Well, think what happens if every judge who is conservative has to be pro-life. Do they have to be pro-life? No. We have to get away from this idea that you have to fit a certain mold politically before you can be a judge in this country. And, if we do not, we are going to destroy this country.

What we want is people of integrity who understand the limited role of a judge; and that is not to put your personal opinions in but to, in fact, take the Constitution, take the statutes, and take the treaties, follow Supreme Court precedent, and make sure everybody who comes into your courtroom gets a fair chance, given what those rules are. They are not to make new law. They are not to put their opinions in. They are not to change based on what they feel rather than what the law says.

The only way we can have blind justice is to make sure those litmus tests are not a part of the selection. And what we heard today was the opposition—wouldn't go into details—come and aggressively tell us why you do not want Jerome Holmes to be an appellate judge on the Tenth Circuit. We are not going to hear that. We are not going to hear that at all. Instead, we are going to hear a political debate about the politics of division in our country rather than the healing hand of reconciliation that should be about the leadership in this body and Congress. How do we reconcile our differences to move the country forward instead of divide? How do we gain advantage in the next election by making somebody look bad.

That is what we just heard. How do we make somebody look bad? It is easy to make somebody look bad. It is a lot harder to build them up and say, in spite of our differences, we can walk down the road together to build a better America for everybody. We did not hear that this morning. What we heard was the politics of division. First of all, I think it is improper to do that when we are considering the nomination of such a great American as Jerome Holmes.

I want to comment a minute on the stem cell debate. I am a physician. I think it is so unfortunate that we are gaming this. All of us, as families and members of this society, have members in our families who have diseases for which future research is going to unlock wonderful and magnificent cures. There is no question about that. But there is a question about an embryo. I personally believe to destroy an embryo is to take a life. That is my personal belief. You can have a different position than that, and it does not make you a bad person. It just means we have different positions. It does not make you incapable of making good decisions in the future if you have a different position than I do.

But there are some facts that are not out, and I would hope the American public would listen to them. Embryonic stem cells have tremendous potential. There is no question about it. But they also have potential tremendous danger. And there will be no cure that will come from embryonic stem cells that does not come along with potential danger, and that is called rejection because it will not be your tissue, it will be the tissue of a clone, which will still have foreign DNA in it that is foreign to you. So any cure that comes out of embryonic stem cell research will be faced with a lifelong utilization of medicines to keep you from rejecting that treatment.

Now, the difference between an embryonic stem cell and a cord blood or adult stem cell or an amniotic membrane stem cell or chorionic stem cell is that it is your tissue, there is no rejection. There is no potential for rejection if you use your own stem cells to treat yourself so you do not have to have a lifelong utilization of medicines. And the complication of those medicines is tremendous.

The other thing we did not hear today, which is the most promising for everything that we have in terms of research, is called germ cell stem cells, that have absolutely all the potential of embryonic stem cells with none of the downside and none of the rejection and none of the carcinogenesis or teratogenesis, which means the forming of tumors—has none of the downside—so, in fact, we now have in front of us, in the last 9 months, in this country an ethical alternative that solves all the problems associated with embryonic stem cells and gives us all the potential. But we did not hear a thing about that today.

We did not hear it because we were creating a wedge issue for the elections rather than solving the problems of health care in this country. We did not hear about the fact that you can take a stem cell from the duct of the pancreas and recreate beta islet cells to have people—children and adults—who are insulin dependent today have reproduction of their insulin on their own from their own cells. We did not hear that. What we heard was division rather than reconciliation.

I think it is highly unfortunate that we take time when we should be talking about the merits of what do we want in our judges. I do not care if a judge is liberal or conservative. I do not care if a judge is a Republican or a Democrat. What I do care about is do they buy the fact that they have a limited role? Do they understand what that role is, that they are there to follow stare decisis, precedent set by the Supreme Court, and the only books they get to look at is what the law, the Constitution, and the treaties say? That is what they get to decide it on, and the facts of the case.

It should not matter what their political affiliation is. It should not matter what their philosophy is of life.

What should matter is, how do they see their role? Jerome Holmes is a man who understands the role of a judge. He will make a fine judge. There is not anybody who knows this man who has come forward, in any of the testimony or any of the history, who has raised an issue about his integrity, his competence, or his character. But we have one issue. He has written his real opinion.

If we say judges cannot have an opinion outside of their job, then we are going to have terrible judges—terrible judges. And if we use only political marks—you have to line up on all the politically correct stuff from my viewpoint or somebody else's viewpoint to be a judge—we are going to have terrible judges. But, more importantly, we are going to have a divided country.

What we need in our country today is leadership that brings us together, not leadership that divides us. We need leadership that looks at a vision of America as to what we need 30 years from now, and what do we do today to get there, rather than to concentrate on our differences today so we can have a political advantage in the next election. The American people understand that. They can be manipulated. We saw that today.

But America is great when America embraces its heritage. And that heritage is self-sacrifice and service for the next generations. It is not about, how do I make myself better today; how do I create an advantage for me politically today. It is about putting me second and our country first. It is about putting my party second and our country first. It is about creating a future for the very lives we are saying we want to cure with stem cells so they have something to look forward to.

Those who vote against Jerome Holmes do not have that vision for America. They have a vision of alienation, of division, of failure for our country.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The Holmes nomination is pending.

Mr. LEAHY. Is there a time agreement?

The ACTING PRESIDENT pro tempore. Yes, there is.

Mr. LEAHY. How much time is available to the Senator from Vermont?

The ACTING PRESIDENT pro tempore. Forty minutes thirty seconds.

Mr. LEAHY. I thank the Chair. Mr. President, today, the Senate considers the nomination of Jerome A. Holmes for a lifetime appointment to the Court of Appeals for the Tenth Circuit. Just last week we confirmed another nominee to the Tenth Circuit, the fifth to be appointed by this President. This progress comes in stark contrast to the seven years in which a Republican-led Senate failed to confirm a single new

judge for that court. Indeed, when I moved forward with the nominations of Harris Hartz of New Mexico, Terrence O'Brien of Wyoming, and Michael McConnell of Utah, it broke a long-standing partisan barricade that had been maintained by Republicans. Among the victims of the Republican obstruction were outstanding lawyers President Clinton nominated such as James Lyons and Christine Arguello, who were never even granted hearings by the Republican majority. Judge Lyons was among the many Clinton nominees voted unanimously "Well Qualified" by the American Bar Association who were never granted hearings, and Ms. Arguello is a talented Hispanic attorney whose nomination had significant, widespread and bipartisan support from her community and State. They were among the more than 60 qualified, moderate judicial nominees of President Clinton that Republicans "pocket filibustered" and defeated without hearings or votes of any kind.

Just last Thursday, Democratic Senators joined in the confirmation of Judge Gorsuch, an extremely conservative nominee, and three others. Working together we confirmed two circuit court nominees and two Federal trial court nominees in a matter of minutes. We brought the total number of judicial nominees confirmed during this President's term to 255, which exceeds the total for the last 5½ years of the Clinton administration. It brought the total number of judges confirmed over the last 18 months to 50. Of course, during the 17 months I chaired the Judiciary Committee the Senate confirmed 100 lifetime judges, twice as many in less time. Last week's success demonstrates again how we can make progress in filling vacancies by working together. Senator SALAZAR's support for Judge Gorsuch was a critical factor in our ability to act swiftly. Senator LINCOLN's and Senator PRYOR's support for confirming Judge Shepherd to the Eighth Circuit likewise made a real difference.

Regrettably, this nomination we consider today is not without controversy and concern. Mr. Holmes initially was nominated to fill a district court seat in Oklahoma. The White House withdrew that nomination and renominated him to the circuit court after Judge James H. Payne asked the President to withdraw his nomination. That withdrawal came after public reports that Judge Payne had ruled on a number of cases in which he had a conflict of interest. While the committee never had a chance to hear directly from Judge Payne about the reported conflicts, these types of conflicts are a violation of Federal law as well as canons of judicial ethics and have no place on the Federal bench. Certainly, they should not be rewarded with a promotion.

Before Mr. Holmes' hearing, I raised concerns about the many controversial letters and columns he has written on such topics as juror racial bias, affirma-

tive action, discrimination, and school vouchers. In these writings, Mr. Holmes derided opposing points of view and those who held them. I asked Mr. Holmes to address my concerns about how he might rule on civil rights issues and how he would treat litigants as a judge. Regrettably, Mr. Holmes' stock answers to my questions that he would follow Supreme Court precedent have not reassured me that he would be the kind of judge who understands the critical role of the courts as a protection of individual rights and civil rights.

In one column, Mr. Holmes described certain allegations of racial prejudice at criminal trials as "harmful" because it "bolster[s] the cynical view that jurors vote along racial lines," which "undermines public confidence in the fairness of the criminal justice system." In fact, Mr. Holmes suggested that it is the focus on the problem of racial bias in jury selection—as opposed to the racial bias itself that—harms the criminal justice system. He wrote that focusing on racial bias "may actually give the green light to jurors to exercise arbitrary power in the jury box when their racial number allow it."

The Supreme Court has long recognized that racial bias in jury selection undermines constitutional guarantees to a fair trial, establishing in the landmark 1986 decision *Batson v. Kentucky* that striking jurors on the basis of race is unconstitutional. In contrast to Mr. Holmes' statement that accusations of racial bias are merely "cynical," *Batson* was based on evidence showing patterns of race discrimination in jury selection. It has been reaffirmed repeatedly during the last 20 years in sharp contrast to the views of Mr. Holmes. I gave Mr. Holmes every opportunity to admit error and indicate not only that he had learned of the Supreme Court's precedent but that he had adopted that view of the law and accepted the prohibitions against racial discrimination as just, but received no such reassurance. Instead, the nominee begrudgingly acknowledged that he would have to follow Supreme Court precedent when expressly bound by it.

In another column Mr. Holmes wrote after the Supreme Court's landmark affirmative action decision, *Grutter v. Bollinger*, he criticized the High Court for missing an "important opportunity to drive the final nail in the coffin of affirmative action" and said that the "court did not go far enough: Affirmative action is still alive." In addition, he described affirmative action scholarship programs as involving classifications that are "constitutionally dubious and morally offensive."

This was a landmark case and in it Justice Sandra Day O'Connor spoke for the Supreme Court and the Nation. Justice O'Connor, a conservative appointed by President Reagan, considered the facts and the law carefully. She took into account the brief from 65 leading U.S. corporations that noted

the importance of a diverse workforce and the brief of a highly respected group of former military officers that the military needed a racially diverse and highly qualified corps of officers. She built upon the Supreme Court's Bakke decision when she upheld the University of Michigan Law School's use of race as a factor in law school admissions and affirmed the important interest in diversity. She proclaimed: "Effective participation by members of all racial and ethnic groups in the civic life of our nation is essential if the dream of one nation, indivisible, is to be realized." She went on to note that she hoped and expected that consideration of race might no longer be necessary in another 25 years. Even after the decision, Mr. Holmes chose to criticize Justice O'Connor's pragmatic, principled and practical resolution of what had become an ideological dispute. Sadly, Mr. Holmes seems to continue to want to take sides, and in my view, he is on the wrong side.

Just last week, the Senate unanimously extended the expiring provisions of the Voting Rights Act of 1965 for another 25 years. We all hope that such special provisions will no longer be necessary after another 25 years of growth and progress. But they are needed now.

Last week, we also heard the President, who has nominated Mr. Holmes, acknowledge that slavery and racial discrimination "placed a stain on America's founding, a stain that we have not yet wiped clean." In his first-ever address to the NAACP national convention during his time in office, the President said racial discrimination remains a "wound" that "is not fully healed." I will not soon forget President Bush speaking to the nation from Jackson Square in New Orleans and acknowledging that "poverty has roots in a history of racial discrimination, which cut off generations from the opportunity of America."

Such powerful words inspire hope for change. But that change only occurs when those words are followed by action. During his address to the NAACP, the President lamented the Republican Party's loss of support among many African Americans in our country today. He called it a "tragedy" that the party of Abraham Lincoln could disenfranchise the African-American community. It is not difficult to understand why. Despite his eventual support for the reauthorization of the Voting Rights Act, this President's priorities, his policies—and indeed his nominees do not demonstrate any sort of meaningful commitment on the part of this administration to confront the very real racial and economic disparities that continue to persist today.

When considering a nominee to a lifetime appointment on the Federal bench, a chief consideration of mine has always been whether all litigants would get a fair hearing in that nominee's courtroom. That is why I have been, and remain, concerned about the

tone and stridency of Mr. Holmes' writings. In answering my questions about the tone of his criticisms of those with whom he disagrees on issues, Mr. Holmes seeks to make a distinction between "the role of the opinion-article writer" and the role of a judge. The fact that Mr. Holmes took part in hard-edged debate on public issues should not be disqualifying. It appears, however, that those opinions are what earned him this elevated nomination and what his proponents expect he will deliver from the bench.

Mr. Holmes has been an outspoken critic not only of affirmative action programs and efforts to combat race discrimination, but of African-American civil rights leaders who support them, calling them "ideologically bankrupt." He has called into question the sincerity of civil rights organizations opposed to school vouchers by describing them as having "longstanding ties to school employee labor unions, which view vouchers as a dangerous threat to the educational status quo, in which teachers bear little or no accountability for their students' educational failures." When the convention of the NAACP reacted negatively last week to President Bush's advocacy for vouchers, it was not because they were under the sway of any teachers' union. It was because they know how important public education is to the futures of so many from minority communities.

In a letter to one publication, Mr. Holmes criticized claims of race discrimination based on forced assimilation, characterizing a doctor's complaint that his colleagues had "negative reactions to his dreadlocks" as "naïve." In another article, he described a defense attorney's concerns about racial bias in jury selections as "philosophically offensive." Mr. Holmes' comments belittling those concerned with the persistence of race-based barriers in this country leave me with little assurance that he has the ability to maintain objectivity when applying constitutional and statutory remedies for race discrimination and concerned that he will not have an open and fair mind as a judge.

Mr. Holmes' membership in the Men's Dinner Club of Oklahoma City, which restricts its membership to men, also concerns me about his ability to have an open mind. He did not resign his membership until February 2, 2006, less than 2 weeks before his initial nomination to be United States District Judge for the District of Oklahoma, presumably only after he had been notified that he would be nominated. When I asked him about why he said in his response to the committee's questionnaire that he did "not perceive the club as practicing invidious discrimination," he did not respond directly. Instead, he declared in a self-serving conclusion that he would "not knowingly be a member of any organization that harbored or expressed any bias against women, or any other groups on the

basis of immutable characteristics." I am left to wonder what it is that Mr. Holmes would consider the kind of discrimination with which he would not want to be associated and why he was not troubled by the Men's Dinner Club. It was a place for social and professional advancement for him and he seemed not at all concerned with its restrictive policies. The fact that Mr. Holmes did not resign until the eve of his nomination because "some might perceive the Men's Dinner Club as being an improper organization" is troubling.

I worry that even before I announced any opposition to Mr. Holmes' nomination, we had already begun to hear the whispers of criticisms taken from the pages of the playbook of extreme right-wing groups. These groups marked a new low a few years ago by launching a scurrilous campaign to inject religion into the debate over judicial nominations. These smears were fabricated as a calculated weapon to chill proper consideration of candidates nominated for significant judicial positions. Similar, baseless accusations of other forms of discrimination serve only to inflame and distract from the fair and deliberate consideration of judicial nominations.

The Senate has confirmed 255 of this President's nominee including 100 who were approved during the 17 months that Democrats made of the Senate majority. The first confirmation when I became chairman was of an African-American circuit court nominee on whom Republicans had refused to vote. For that matter, it was Republican Senators who defeated the nominations of Justice Ronnie White, Judge Beatty, Judge Wynn, Kathleen McCree Lewis and so many outstanding African-Americans judges and lawyers who they pocket filibustered.

I was surprised when we debated Mr. Holmes' nomination in the Judiciary Committee that those defending Mr. Holmes' nomination criticized any expression of concern about his troubling writings in the area of civil rights. I appreciated when the Senator from Oklahoma apologized to me after that debate. The Senators from Oklahoma are within their rights in supporting this nomination. In fact, I consider their support as a weighty factor in considering this nomination.

That support is not universal. This is a controversial nomination. A number of leading organizations concerned with civil rights, including the NAACP, MALDEF, and many others, raised "grave concern" about Mr. Holmes' record. The Leadership Conference on Civil Rights, the country's oldest, largest civil rights coalition has opposed the confirmation of this nomination. Having reviewed the record, I share those concerns.

In the last several months, as we have worked to reauthorize and revitalize the Voting Rights Act, I have been thinking about the civil rights movement, what progress we have

made, and what distance we still have to go. The new law is named for Coretta Scott King among others. Dr. Martin Luther King Jr. knew that our judges and our courts were important to securing civil rights. It was not the Congress but the Supreme Court that moved the Nation forward in its *Brown v. Board of Education* decision in 1954. It is worth recalling Dr. King's call for the political branches to join the courts in protecting the fundamental rights of all. In his 1957 address, "Give Us the Ballot," Dr. King said, "[s]o far, only the judicial branch of the government has evinced this quality of leadership. If the executive and legislative branches of the government were as concerned about the protection of our citizenship rights as the Federal courts have been, then the transition from a segregated to an integrated society would be infinitely smoother." Dr. King knew how important fairminded judges were to the realization of equality. Dr. King's view and that expressed by Mr. Holmes appear to be in sharp contrast.

I take no pleasure today in doing my duty. I have considered this nomination on its merits and, in good conscience, I cannot support it. Based on Mr. Holmes' own writings and his responses to our questions, I will vote no. I hope that Mr. Holmes will prove my concerns unfounded and be the kind of judge that Dr. King would have admired, a judge in the mold of Thurgood Marshall, William Hastie or A. Leon Higginbotham, Jr.

I ask unanimous consent that a letter raising grave concerns from the Leadership Conference on Civil Rights regarding Mr. Holmes' nomination be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEADERSHIP CONFERENCE
ON CIVIL RIGHTS,
Washington, DC, June 14, 2006.

Hon. ARLEN SPECTER, Chairman,
Hon. PATRICK J. LEAHY, Ranking Member,
Committee on the Judiciary, U.S. Senate,
Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the undersigned organizations, we write to express our grave concern regarding the nomination of Jerome Holmes to serve on the Court of Appeals for the Tenth Circuit. Mr. Holmes has been a longstanding and outspoken critic of affirmative action. His criticism of affirmative action raises serious questions about whether litigants could expect him to rule impartially and fairly on claims that turn on legal principles of affirmative action, and about Mr. Holmes' approach to antidiscrimination laws more broadly, if he is confirmed.

Many civil rights organizations, including the Leadership Conference on Civil Rights (LCCR), the Leadership Conference on Civil Rights Education Fund (LCCREF), and the other signatories to this letter, worked to persuade the U.S. Supreme Court to uphold the University of Michigan's affirmative action programs. In the closely watched decision, the Supreme Court reaffirmed that universities may take race into consideration as one factor among many when selecting incoming students. In a 5 to 4 opinion written

by Justice O'Connor, the Supreme Court in *Grutter v. Bollinger* specifically endorsed Justice Lewis Powell's view in 1978's *Regents of the University of California v. Bakke* that student body diversity is a compelling state interest that can justify using race in university admissions. The Supreme Court thus resolved a split among the lower courts as to Bakke's value as binding precedent.

Both before and after the Court spoke in *Grutter*, Mr. Holmes has been openly hostile to affirmative action, expressing his deeply held beliefs regarding the matter. To that end, Holmes has penned several articles widely publicizing these views. In one article, Holmes referred to affirmative action as a vehicle to "[sow] the seeds of racial disharmony." As the Court decided the University of Michigan affirmative action cases, Holmes stated that, "[t]he court did not go far enough . . . the court upheld the affirmative action policy of the university's law school. And in so doing, it missed an important opportunity to drive the final nail in the coffin of affirmative action." With regard to minority scholarships, Mr. Holmes has written that, the "shelving [of] race-based scholarship programs . . . takes us one step closer to a time when constitutionally dubious and morally offensive racial classifications will no longer impede the progress of any citizen toward full achievement of the American dream."

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing African-Americans and other minorities and women with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for African-Americans and other minorities and women remains an elusive goal. Continued use of affirmative action is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities. Therefore, we have no choice but to express our deepest concerns regarding Mr. Holmes' nomination.

If you have any questions or need further information, please contact Nancy Zirkin, LCCR deputy director or Richard Woodruff at the Alliance for Justice.

Sincerely,
Alliance for Justice; American Federation of State, County and Municipal Employees; Feminist Majority; Lawyers' Committee for Civil Rights Under Law; Leadership Conference on Civil Rights; Legal Momentum; Mexican American Legal Defense and Educational Fund; NAACP Legal Defense & Educational Fund, Inc.; National Association for the Advancement of Colored People (NAACP); National Partnership for Women & Families; National Urban League; National Women's Law Center; People For the American Way; The American Association for Affirmative Action; YWCA USA.

Mr. LEAHY. Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Mr. President, could the Chair advise the time remaining on both sides?

The ACTING PRESIDENT pro tempore. The majority has 46 minutes remaining; the minority has 22½ minutes.

Mr. COBURN. I thank the Chair.

I ask unanimous consent that letters from judges, Democrats, Republicans, businesses, the Governor of Oklahoma, be printed in the RECORD in support of Mr. Holmes.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. COURT OF APPEALS,
TENTH CIRCUIT,
Oklahoma City, OK, June 14, 2006.

Re recommendation of Jerome Holmes nomination for the United States Circuit Judge for the Tenth Circuit Court of Appeals.

Hon. ARLEN SPECTER,
Chairman of Judiciary Committee, U.S. Senate,
Washington, DC.

DEAR SENATOR: I am pleased to recommend highly my former clerk, Jerome Holmes, as a splendid candidate for service as a United States Circuit Judge of the Tenth Circuit.

Jerome gave extraordinary service to me as my law clerk from August 1990 to August 1991. He is dedicated to the highest standards of intellectual service and performed his work for our court as my clerk with complete impartiality and compassion for the people whose cases were before the court. I am convinced he will give extraordinarily fine service as a fair minded and industrious judge of the Tenth Circuit Court of Appeals if his nomination is confirmed. I heartily commend Jerome for your favorable consideration.

Sincerely,
WILLIAM J. HOLLOWAY, JR.

CROWE & DUNLEVY,
ATTORNEYS AND COUNSELORS AT LAW,
Oklahoma City, OK, June 13, 2006.

Re Jerome A. Holmes.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, DC.

DEAR SENATOR SPECTER: I write in support of the nomination of Jerome A. Holmes to the Tenth Circuit Court of Appeals. After a distinguished career in the Office of the United States Attorney for the Western District of Oklahoma, in August, 2005, Jerome joined our firm as a director. Jerome has already assumed firm leadership positions as the chair of both our Diversity and Business Development Committees.

Jerome is thoughtful and principled in all that he does. The other directors of this firm quickly learned to respect and rely upon him. Jerome has been able to represent the clients of the firm and become an integral part of our firm through his outstanding analytical abilities and his excellent temperament.

In fact, Jerome Holmes is a paradigm for the judicial temperament and discretion that we expect of a judicial officer. He is the most articulate and well spoken attorney I have had the opportunity to work with, and is easily able to ponder multiple sides of complex issues and arrive at a thoughtful analysis.

Jerome has long been active in both the Oklahoma Bar Association and the Oklahoma County Bar Association and is now serving our profession as the vice president of the Oklahoma Bar Association. He has earned the respect of the legal community, both bench and bar, in this city and state.

Jerome Holmes will fill the role as a member of the Tenth Circuit Court of Appeals with distinction and the highest level of professional integrity. I take, great pleasure in

sending my highest recommendation of Jerome Holmes for this important judicial position.

Yours truly,

BROOKE S. MURPHY,
President.

RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS, ATTORNEYS AND
COUNSELORS AT LAW,

Oklahoma City, OK, May 26, 2006.

Re recommendation of Jerome A. Holmes,
U.S. Court of Appeals for the Tenth Circuit.

Hon. ARLEN SPECTER,
U.S. Senator,
Washington, DC.

DEAR SENATOR: Please accept this letter as an enthusiastic endorsement of Jerome A. Holmes for a position on the U.S. Court of Appeals for the Tenth Circuit. Although I often find myself in disagreement with Senators Inhofe and Coburn on a variety of policy issues, I have a great deal of respect for Jerome and must commend the Senators for endorsing his nomination for this important judicial position. I respectfully request that you move Jerome's name forward for confirmation.

Jerome is an experienced trial lawyer, working on civil and criminal matters. He recently entered private practice at one of the largest law firms in Oklahoma, after a distinguished 11-year career as a federal prosecutor in the U.S. Attorney's Office for the Western District of Oklahoma. During his time in the U.S. Attorney's Office, Jerome primarily prosecuted cases involving white collar and public corruption offenses. He also worked for almost one year on the prosecution team that brought charges against the perpetrators of the Oklahoma City Bombing.

Jerome received his Juris Doctor from Georgetown University Law Center, where he served as Editor-in-Chief of the Georgetown Immigration Law Journal. He received a B.A. degree from Wake Forest University, graduating cum laude. In addition, Jerome earned a Master in Public Administration degree from Harvard University's John F. Kennedy School of Government, where he was a John B. Pickett Fellow in Criminal Justice Policy and Management.

Jerome is licensed to practice law in three jurisdictions, including Oklahoma. He also has been admitted to practice before the Bars of the U.S. Supreme Court and the U.S. Courts of Appeals for the Tenth Circuit and the District of Columbia Circuit.

Jerome is a leader in his profession, currently serving on the Oklahoma Bar Association's Board of Governors (BOG) as Vice President. He is the first African American in the history of the Oklahoma Bar Association to occupy an officer's position on the BOG.

Jerome's long-standing concern for the economically disadvantaged is evident in his professional and civic activities. Jerome serves on the ABA's Commission of Homelessness & Poverty and is Chair of the Board of one of the largest providers of shelter to Oklahoma's homeless, City Rescue Mission. Jerome also is committed to ensuring that the doors of the legal profession are open to underrepresented racial and ethnic minorities. He is Chair of his law firm's Diversity Committee and has devoted numerous hours to working with minority high school students in a mock trial program.

Jerome enjoys widespread support among Oklahoma Democrats and Republicans alike. In Oklahoma legal circles, Jerome has a very strong reputation. He is a dedicated professional who would be committed as a judge to fairness and justice, rather than ideology. I

heartily endorse Jerome's nomination for the Tenth Circuit position without reservation. Please help all Oklahomans by moving Jerome's name forward for confirmation as soon as possible.

Sincerely,

MICHAEL C. TURPEN.

JIM ROTH,
OKLAHOMA COUNTY DISTRICT ONE,
Oklahoma City, Oklahoma.

Re: nomination of Jerome Holmes, 10th Circuit Court of Appeals

Hon. ARLEN SPECTER,
Chairman, U.S. Senate, Judiciary Committee,
Washington, DC.

Hon. PATRICK LEAHY,
Ranking Member, U.S. Senate, Judiciary Committee,
Washington, DC.

DEAR DISTINGUISHED SENATORS: It is truly an honor to offer this Letter of Recommendation for your consideration on behalf of Jerome Holmes, a nominee for the 10th Circuit Court of Appeals.

I have known Jerome Holmes for several years, both professionally and personally, as I am also a member of the Oklahoma Bar Association. I know him to be a person of Integrity and Character and I have always appreciated Mr. Holmes' fairness in our dealings. What's more, I have witnessed Mr. Holmes' efforts in our local community to improve the lives of those around us; all people regardless of where they live, what they look like or how much money they have. He has an altruistic spirit that makes him a standout in this world.

I serve Oklahoma County as one of three elected County Commissioners, am a proud Democrat and consider Jerome Holmes to be a principled leader who demonstrates mutual respect for all people. In particular, he is respectful of views that differ from his own and he enjoys tremendous bipartisan support and respect.

If I can provide any further information or perspective, please do not hesitate to contact me at your convenience.

Respectfully yours,

JIM ROTH,
County Commissioner.

HOLY TEMPLE BAPTIST CHURCH,
Oklahoma City, June 21, 2006

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATORS SPECTER AND LEAHY: I am writing in reference to the nomination of the Honorable Mr. Jerome A. Holmes, Esq.'s judicial appointment. I appreciate the concern that has been expressed about his nomination based upon his writings and positions on affirmative action. In all honesty I stand in a position that is contrary to the interpreted and most likely actual personal stance of Mr. Holmes, yet my relationship with him moved me to write and to express my support for him.

I have known Mr. Holmes for many years and believe that he does have a high regard for the views of those who maybe different from his own. That in and of itself is enough for me to believe that he would "hear" fairly. In addition, Mr. Holmes has displayed a level of integrity in all his dealings that I have been aware and has shown in our personal conversation willingness to listen and respect differing views. I trust Mr. Holmes and so in light of our differences I support his nomination.

I do realize the responsibility that is upon me as a Pastor, Community Leader and a concerned citizen. This is no light matter for

me, indeed it is with much prayer and struggle that I searched out the right words to convey the right tone to reinforce my message. As a member of the NAACP, Urban League and many other organizations that fight for the rights of minorities, I am moved to ask your continued approval of this nomination.

Sincerely,

GEORGE E. YOUNG, Sr.
Pastor.

JUNE 19, 2006.

Re recommendation of Jerome A. Holmes,
U.S. Court of Appeals for the Tenth Circuit.

Hon. ARLEN SPECTER,
U.S. Senator,
Washington, DC.

DEAR SENATOR SPECTER: As Governor of the State of Oklahoma, and as a former Chair of the State Senate Judiciary Committee, I have had a lot of experience in the selection of judges. In our modified Missouri system of appointment of judges, the Governor plays a key role when judicial vacancies occur. Not only does the Governor appoint members to the Judicial Nominating Commission, but he or she also is forwarded the final three names of judicial applicants for gubernatorial selection. I take this responsibility very seriously, and I have personally interviewed every single candidate forwarded to me.

I have come to know and respect Mr. Jerome Holmes, a nominee for the Tenth Circuit vacancy created by the retirement of my friend, Judge Stephanie Seymour. Jerome is a highly qualified candidate, a superb lawyer with a reputation for fairness, ethics and integrity. Indeed, I recently appointed his former supervisor, Judge Arlene Johnson, to our court of last resort on criminal matters, the Oklahoma Court of Criminal Appeals. When Arlene was Chief of the Criminal Division of the U.S. Attorney's office in the Western District of Oklahoma, Jerome was her chief deputy. Their division was considered a model division of the U. S. Attorney's office. Jerome handled this difficult task with competence and honor, and he was part of the prosecution team that brought charges against the perpetrators of the Oklahoma City federal building bombing.

I have also come to know Jerome on a personal basis through the Oklahoma Symposium, a sort of "think tank" gathering of top Oklahomans that meets formally once a year, and informally in small groups from time to time. It is an honor to be invited to join the Symposium, and Jerome was among the first to be invited for membership.

Jerome is uniquely qualified for this position. He served as a law clerk for Federal District Judge Wayne Alley and then for the then-Chief Judge of the Tenth Circuit Court of Appeals, the honorable Judge William Holloway. Jerome then practiced for several years in civil litigation before devoting himself for eleven years to the U.S. Attorney's Office in Oklahoma City. For several months, he has been practicing at Crowe & Dunlevy, one of the largest and most respected law firms in Oklahoma. In short, I do not think you could have a candidate more highly qualified and regarded than Jerome Holmes.

I hope you will see fit to appoint this remarkably talented young man to this important position. I know of the Tenth Circuit, as well, because my cousin, Judge Robert Henry, will become the Chief Judge of that Circuit in 2008. I know he shares my high regard for Jerome, as he has told me of Jerome's excellent professional appearances before that court.

I continue, Senator, to appreciate the very important work that you do. Please do not

hesitate to contact me if I can be of service, or, of course, if you should come to Oklahoma.

Sincerely,

BRAD HENRY,
Governor.

RYAN, WHALEY & COLDIRON,
ATTORNEYS AND COUNSELORS AT LAW,
Oklahoma City, OK, June 21, 2006.

Re: nomination of Jerome A. Holmes to the Tenth Circuit.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: I am writing in support of the nomination of Jerome A. Holmes for the United States Court of Appeals for the Tenth Circuit.

I am a lifelong Democrat. For six years I was fortunate to work on the United States Senate staff of Senator David Boren and the Senate Agriculture Committee. During this time I met Senator Leahy and personally witnessed his leadership as a committee chairman. I was the Democratic nominee for an Oklahoma congressional race in 1994. I later became a federal prosecutor and eventually served as the United States Attorney for the Western District of Oklahoma, first through appointment by Attorney General Janet Reno and then through nomination by President Clinton.

I have known Jerome Holmes for over ten years through our work together in the United States Attorney's Office and now in private practice. I believe his intellect, experience and character make him an excellent choice for a position on the appellate court. I saw these qualities firsthand as Jerome carried out his many responsibilities as a prosecutor. One of the most important duties he performed was that of the office's legal ethics and professional responsibility counselor. Jerome acted ably in this capacity during a time of heightened scrutiny for federal prosecutors following the passage of the Hyde Act and the McDade Amendment. Since both of you are former prosecutors, I trust that you can appreciate the degree of confidence in Jerome's abilities and integrity that were required in order to be given such an assignment by me and other United States Attorneys.

Jerome's nomination has apparently triggered concern from groups that have focused on his writings on affirmative action. In this regard, I can offer three observations. First, I have known Jerome to be open-minded and respectful of different views. More importantly, I know Jerome to be respectful of the role of the courts, as opposed to the role of the advocates, and I believe this understanding to be partly the result of his three years of service as a law clerk for federal appellate and district judges. Finally, as noted above, I know Jerome to be a person of unwavering integrity. Therefore, when Jerome states under oath that he will put his personal views aside and follow the law, I believe he will do just that.

I hope these observations are helpful as you consider Jerome's nomination, which I hope you will act upon favorably. I respectfully request that this letter be made part of the committee record regarding his nomination. If I can be of further assistance or if you or your staff have any questions, please do not hesitate to contact me.

Sincerely,

DANIEL G. WEBBER, Jr.

OKLAHOMA BAR ASSOCIATION,
Oklahoma City, OK, July 21, 2006.

Re: confirmation of Jerome A. Holmes,
Nominee for Judicial Appointment to
Tenth Circuit Court of Appeals.

Hon. JAMES M. INHOFE,
Russell Center Office Building,
Washington, DC.

DEAR SENATOR INHOFE: As president of the Oklahoma Bar Association, I am writing in support of the nomination of Jerome A. Holmes, Esquire to the United States Court of Appeals for the Tenth Circuit.

I've had the pleasure of serving with Jerome for the last 2½ years, in various official capacities with the Oklahoma Bar Association. I selected Jerome to serve as my Vice President for this year. He has served in that capacity with exceptional skill, talent and knowledge of a vast breadth of issues.

I have enjoyed working with Jerome as I find him to be an intelligent lawyer and an extremely thoughtful leader who excels in everything that he does. I believe that Jerome should be entitled to bipartisan support because he displays the demeanor, work ethic and outstanding capacity to reach an appropriate decision under our constitution. Jerome will be an outstanding jurist who will follow the law and not his personal views or beliefs.

Again, I appreciate your consideration of my support for the confirmation of Jerome Holmes to the United States Court of Appeals for the Tenth Circuit by the full Senate. Please feel free to contact me if you have any questions regarding his qualifications.

Very truly yours,

WILLIAM R. GRIMM,
President, Oklahoma Bar Association.

RESOLUTION TO THE U.S. SENATE

Whereas, Jerome A. Holmes exemplifies the highest standards of the legal profession, has given unselfishly of his time and talents to further the legal profession, has served as Vice President and Governor of the Oklahoma Bar Association and has held numerous other high positions within the Association;

Whereas, Jerome A. Holmes has consistently demonstrated that he possesses the demeanor, intelligence and legal skills to serve in the highest office of his profession and the public;

Whereas, Jerome A. Holmes has served his profession, his community, his state, and his nation with courageous, devoted and tireless service to insure that the rule of law prevails and that there be liberty and justice for all;

Whereas, Jerome A. Holmes has received a nomination from President George W. Bush to serve as a judge of the Tenth Circuit Court of Appeals pending confirmation by the United States Senate;

Be it Resolved, on behalf of the Oklahoma Bar Association, the Board of Governors unqualifiedly and wholeheartedly supports the confirmation of Jerome A. Holmes to the position of judge of the Tenth Circuit Court of Appeals;

Be it Further Resolved, the Board of Governors requests the honorable members of the United States Senate for favorable confirmation of Jerome A. Holmes.

In Witness Whereof, this Resolution is unanimously Adopted by the Oklahoma Bar Association Board of Governors this 21st day of July 2006.

WILLIAM R. GRIMM, PRESIDENT,
Oklahoma Bar Association.

Mr. COBURN. Mr. President, I want to take a few moments to discuss the comments we just heard. I will go back to the litmus test.

My belief is there is no way Jerome Holmes could have given an answer in response to questions that were asked by Senator LEAHY that would have met with Senator LEAHY's approval. We had a hearing on Mr. Holmes. The great concerns we have heard on the floor, nobody came to ask any of those questions. No one showed up other than myself and two other Members to hear Jerome Holmes' response, both in terms of his comments and beliefs about affirmative action, but also about the beliefs he has. This is a man who has experienced racial discrimination. This is a Black man who rose to heights without the assistance of anyone else other than his sheer will and great effort on his part and the character instilled in him by his parents.

There are multiple allegations that have been raised. I will hold back on answering those specifically with Mr. Holmes' responses.

I yield to the senior Senator from Utah 20 minutes. If he needs additional time, I will be more than happy to yield that to him. Would the Chair please notify us when we have 10 minutes remaining?

The ACTING PRESIDENT pro tempore. Yes.

The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague and I appreciate his leadership on the floor. This is an exceptional nominee for the court.

I rise to voice my strong support for the nomination of Jerome A. Holmes of Oklahoma to be a judge on the U.S. Court of Appeals for the Tenth Circuit. With this nomination, we see an all-too-familiar pattern. Mr. Holmes is a highly qualified nominee, a man of integrity and character who knows the proper role of a judge, someone who is praised by those who know him and attacked by some who do not.

Let me review each element of this familiar pattern in turn.

First, Mr. Holmes is a highly qualified nominee. After receiving his law degree from Georgetown University in 1988, where he was editor in chief of the Georgetown Immigration Law Journal, Mr. Holmes returned to Oklahoma and began an impressive legal career. He clerked first for U.S. District Judge Wayne Alley of the Western District of Oklahoma, and then for U.S. Circuit Judge William Holloway of the Tenth Circuit. Both judges have since taken senior status, and I can only imagine how proud they must be to see their former clerk now nominated to the Federal bench himself. And in the case of Judge Holloway, I truly hope that Mr. Holmes will soon have the privilege of calling his former boss a colleague.

After 3 years of private practice with the highly regarded law firm of Steptoe & Johnson, Mr. Holmes entered public service. While an Assistant United States Attorney serving the Western District of Oklahoma, Mr. Holmes prosecuted a wide range of cases and was that office's anti-terrorism coordinator. No doubt among his most vivid

memories from that time was his experience on the prosecution team regarding the Oklahoma City bombing. Somehow, Mr. Holmes also completed a master's degree in public administration from Harvard University's Kennedy School of Government. Currently, after more than a decade as a prosecutor, Mr. Holmes is back in private practice as a director of Crowe & Dunlevy, a prominent law firm in Oklahoma City, where he chairs the firm's diversity committee. He has also served as Vice President of the Oklahoma Bar Association. This is an exceptional man.

Second, Mr. Holmes is a man of integrity and character. We hear now and then about the need for judges who are well-rounded individuals, who are good people as well as good lawyers. Well, during his years in private practice and public service, Mr. Holmes has also served his community. In addition to chairing the Oklahoma City Rescue Mission, Mr. Holmes has been a director of the Oklahoma Medical Research Foundation and a trustee of the Oklahoma City National Memorial Foundation.

Third, Mr. Holmes understands the proper role of judge in our system of Government. He has testified under oath that he knows judges must separate their personal views from what the law requires. He has repeatedly affirmed his commitment to follow applicable Supreme Court precedent in cases that will come before him. This means, as he put it in answers to questions following his hearing, an even-handed application of legal principles in all areas.

Fourth, Mr. Holmes is praised and supported by those who know him. This includes Democrats in Oklahoma. Daniel Webber, appointed by President Bill Clinton to be U.S. Attorney in Oklahoma, has written the Judiciary Committee in support of Mr. Holmes' nomination. He has known this nominee for more than a decade and urged confirmation based on Mr. Holmes' intellect, experience, and character. Reaffirming that the nominee before us today knows the proper role of a judge, Mr. Webber wrote us that Mr. Holmes is "respectful of the role of the courts. . . . When Jerome states under oath that he will put his personal views aside and follow the law, I believe he will do just that."

Oklahoma Governor Brad Henry, a Democrat, also wrote the Judiciary Committee to support this nomination. Governor Henry said that Mr. Holmes is "a highly qualified candidate, a superb lawyer, with a reputation for fairness, ethics and integrity. In short, I do not think you could have a candidate more highly qualified and regarded than Jerome Holmes." A superb lawyer with a reputation for fairness, ethics, and integrity. It seems to me that is exactly the formula we should consistently be looking for in nominees to the Federal bench.

So far, so good. The fifth element of this familiar pattern, however, is that

Mr. Holmes is being attacked and opposed by some who do not know him. Mind you, they have not suggested that Mr. Holmes is not qualified to sit on the Federal appellate bench. They have not disputed his character or integrity. Nor have they offered anything to cast doubt on what seems to be universal acclaim from those who know Mr. Holmes and have worked with him. In yet another familiar element of this pattern, Mr. Holmes' critics find fault not with his experience, his qualifications, his integrity, or his character, but his politics.

In particular, the critics take issue with Mr. Holmes' opposition to Government-imposed racial preference policies. Let me emphasize what I mentioned a few minutes ago, that Mr. Holmes helped create and chairs his law firm's diversity committee. In the private arena, he works to recruit and retain qualified lawyers of various racial and ethnic backgrounds. He also believes that race-based policies were once necessary to address the effects of past discrimination. Mr. Holmes would be the first African-American judge on the Tenth Circuit. At the same time, like two-thirds of Americans, Mr. Holmes opposes current programs that condition admission to public universities on race, not to address past discrimination but to create future diversity.

My liberal friends can, of course, disagree with Mr. Holmes on this issue. But by suggesting that his opinion on this issue somehow disqualifies him from serving on the Federal bench, they are treading on very dangerous ground. Mr. Holmes is hardly the first judicial nominee to have taken a clearly defined stand on a controversial issue. I could chronicle some of the more prominent examples, judges overwhelmingly confirmed by this body. Are my liberal friends saying that we should instead be looking to be judicial nominees individuals who have no opinions on issues of the day, who have done nothing, said nothing, and thought nothing? Or are they suggesting that if nominees have thought about and have opinions on controversial issues, only liberal opinions are acceptable?

The issue is not whether a nominee is liberal or conservative, Democrat or Republican, but whether he is committed to basing his judicial decisions on the law. The evidence from him and those who know him is that Mr. Holmes will do just that, and there is not a shred of evidence to the contrary.

Not only that, but Mr. Holmes' supporters—again, those who know him best—also stress his willingness to listen and to respect those with differing views. Oklahoma County Commissioner Jim Roth, another Democrat, wrote the Judiciary Committee calling Mr. Holmes "a principled leader who demonstrates mutual respect for all people. In particular, he is respectful of views that differ from his own and he enjoys tremendous bipartisan support

and respect." That is from a Democrat. How can you ask for a better statement from anybody?

Specifically on the issue that has so captivated Mr. Holmes' critics, Pastor George Young, Sr., who supports affirmative action, writes that "Mr. Holmes has displayed a level of integrity in all his dealings that I have been aware and has shown in out personal conversation willingness to listen and respect differing views."

Perhaps my liberal friends are taking out their litmus paper to judge Mr. Holmes' personal views because they believe that is precisely what should drive judicial decisions. Mr. President, I reject that notion out of hand and I invite those who take such an ideological, politicized view of what judges do to try and sell that to the American people.

Mr. President, personal views or political positions are the wrong standard for evaluating judicial nominees. It distorts the fundamental difference between advocates and judges, between opinion and law. And it misleads the American people about what judges do and the important place they occupy in our system of Government. I am convinced that Mr. Holmes understands far better than his critics that judges must be neutral arbiters, that they must follow the law, that they must set aside personal views or opinions. I am convinced that Mr. Holmes will do just that on the Tenth Circuit.

Mr. President, we have been here before. Nominees of obvious qualification and experience, unquestioned integrity and character, and solid bipartisan support, are nonetheless attacked and maligned because of their personal views or political opinions. It has happened before and, sadly, I expect it will happen in the future. The proper standard, however, looks at qualifications, integrity, and commitment to the proper role of judges in our system of Government. Judged by this proper standard, Mr. Holmes will be a fine member of the court he once served as a law clerk.

Let me close with the words of one of the judges Mr. Holmes served as a law clerk. Judge William Holloway was appointed to the Tenth Circuit in 1968 by President Lyndon Johnson. He wrote the Judiciary Committee that Mr. Holmes "performed his work for our court as my clerk with complete impartiality and compassion for the people whose cases were before the court. I am convinced he will give extraordinarily fine service as a fair minded and industrious judge."

Excellence, fairness, integrity, impartiality, compassion, and a willingness to listen. That is what the evidence shows, Mr. President. Jerome Holmes is a fine lawyer and a good man. He will make a great judge.

I yield the floor.

THE PRESIDING OFFICER (Mr. SUNUNU). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I believe under the agreement I have 15 minutes; am I correct?

The PRESIDING OFFICER. There is no time agreement. The Senator is recognized and may proceed.

Mr. COBURN addressed the Chair.

Mr. KENNEDY. Mr. President, I think I have the floor.

Mr. COBURN. Will the Senator yield for an inquiry of the Chair?

Mr. KENNEDY. Yes.

Mr. COBURN. Mr. President, it is my understanding that we are under a unanimous consent agreement. There is a time agreement, and it is limited on both sides.

The PRESIDING OFFICER. The Senator from Oklahoma is correct. There is 2 hours equally divided. We are operating under a time agreement, but there is no specific consent to limit the Senator from Massachusetts to 15 minutes.

Mr. COBURN. Will the Chair advise the amount of time left on either side? I thank the Senator for yielding.

The PRESIDING OFFICER. The majority has 32 minutes remaining and the minority has 22 minutes remaining.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. I thank the Chair.

Mr. President, the Senate's exercise of its advice and consent power when it considers nominees to the Federal bench is one of our most important constitutional responsibilities. We are conferring on men and women the power to interpret and apply our laws for the rest of their lives. It is the last opportunity any of us have to sit in judgment of them.

Our task is not to evaluate a nominee based on politics but, rather, to consider other important criteria. We start with the essential elements of professional excellence and personal integrity, but we must also evaluate the likelihood that nominees will be fair and openminded judges who bring compassion and understanding of the history and fundamental values of America to the bench.

In considering a nomination to our Federal courts of appeals, we must exercise special care. The Supreme Court accepts few cases out of the thousands of cases it is asked to hear every year. The Federal appellate courts are almost always litigants' last hope for justice from our legal system. For those who seek relief from race and sex discrimination at work or at school, for criminal defendants who have been wrongfully deprived of their liberty or sentenced to death, or for those who seek to protect our liberties, the circuit courts of appeals are almost always their last hope for justice.

The record of Jerome Holmes demonstrates that he is not a nominee we can afford to entrust with the judicial power of the United States. His professional qualifications are not in dispute, but he has taken extreme public stances on issues that regularly come before our courts. These stances suggest that he will not approach these issues with an open mind or fairly apply the law in these areas.

Perhaps most troubling are Mr. Holmes' strong and repeated statements denouncing affirmative action. Just last week, this body reauthorized the Voting Rights Act, one of America's greatest achievements in the effort to overcome centuries of racial oppression. During that debate, numerous Senators had the occasion to revisit the legacy of racially motivated violence, discrimination, and disenfranchisement that oppressed so many in this country. We had the occasion to reflect on the need for strong and complete remedies for those centuries of discrimination that would eliminate it root and branch.

Affirmative action is an effective and necessary remedy that must be available if we are to provide opportunity for all, by breaking down persisting barriers and making it possible for all Americans to demonstrate their abilities and fulfill their potential. Yet Mr. Holmes has repeatedly denounced affirmative action as both immoral and unlawful.

Shortly after the Supreme Court struck down the University of Michigan's affirmative action program for undergraduates but upheld the law school's program, Mr. Holmes wrote:

The court did not go far enough: Affirmative action is still alive.

He lamented that the Court "missed an opportunity to drive the final nail in the coffin of affirmative action." He called affirmative action a "quota system" and accused it of perpetuating a society in which "race unfortunately still matters." He referred to scholarships for minority students as "constitutionally dubious and morally offensive."

We know that race does still matter in our society, which is the very reason lawful affirmative action programs are needed. They guarantee opportunity for minority students who, because of discrimination and its legacy, might otherwise never be able to excel. We all hope for the day that individuals will not be denied opportunity because of race, but until we reach that day, affirmative action programs are part of the solution, not the problem.

Mr. Holmes' extreme statements make it impossible to believe that he will approach affirmative action cases with an open mind. He says he will fairly apply our Nation's affirmative action laws, which have helped—and continue to help—women and racial minorities overcome centuries of discrimination, but his bland assurances are far from sufficient to overcome his record.

His views on our criminal justice system are also disturbing. He has put on a set of ideological blinders to ignore the invidious racial discrimination that persists in criminal trials and sentencing. When a defense lawyer in Oklahoma had the courage to suggest that African Americans accused of committing crimes against Whites in Oklahoma City could not receive a fair trial, Mr. Holmes delivered a swift re-

buke. Not only did he dismiss the effect of racial bias, he also chastised the defense lawyer for even raising the issue, contending that he had undermined the public's confidence in the judicial system. The problem of racial bias in justice is an important issue in the criminal justice system that merits discussion and recognition that we should be seeking effective remedies, not blaming the messenger.

By approving this nominee, the Senate would send a message that we don't care about the racial disparities in our criminal justice system. If we confirm an appellate judge who ignores the realities of such disparities, we cannot expect the public—especially minorities—to believe that they will get a fair day in court. The fact that Mr. Holmes stated these views while serving as deputy criminal chief of a U.S. attorney's office only reinforces my concern about his ability to separate his extreme personal ideologies from his actions as a judge if we confirm his nomination.

Mr. Holmes' aggressive support for the death penalty raises special concern. He said that the statement society sends through the death penalty "is not materially diminished by the fact that . . . mistakes are made" in imposing the death penalty. Unlike Mr. Holmes, most death penalty supporters appreciate the severity of a death sentence. It is irreversible punishment, which means that we must do everything in our power to reduce the possibility of mistakes. Many death penalty advocates have supported expanded use of DNA testing and other tools to avoid mistakes in capital punishment cases.

Taking an extreme position yet again, Mr. Holmes has no respect for these concerns. He is more interested in the symbolism of the death penalty than the fact that an individual life will end. Because the Supreme Court hears so few death penalty cases, appellate courts often have the final word on the life and death of criminal defendants. We should not support the confirmation of a Federal judge who has so little respect for this grave responsibility.

The Senate has supported the overwhelming majority of President Bush's judicial nominees. I have voted for the confirmation of dozens of judges with whom I have ideological differences. However, the nomination of Jerome Holmes is different. I do not believe that he will serve on the Federal bench with a fair and open mind. I, therefore, cannot support the confirmation of Jerome Holmes to the Tenth Circuit, and I urge the Senate to oppose his nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, it is amazing the way things get twisted. I want to read exactly what Jerome Holmes said in his comments about racial bias. The Senator from Massachusetts just stated that he would ignore

reality. Here is what he said in his article.

One need not doubt the lingering effects of racism in our society to reject the above claims. Harvard law professor Randall Kennedy and other scholars remind us that racial prejudice still exists in the jury box.

He didn't deny it. He said it did. You just heard the opposite of that. What he said is: As an African American, I am among the first to condemn it.

We did not hear any of that. And what was just said about what Jerome Holmes wrote, he condemns it. He can't be trusted. That was what we just heard. What you just heard was a litmus test that if he doesn't agree down the line with those who have a completely different political philosophy, he is unqualified. Here is a Black man who has been discriminated against tons in his life. It makes no intuitive sense that he would oppose a jury system that ferreted out racial discrimination. So that is unfounded.

His comments on the death penalty, Judge Holmes said we should use DNA but that should come through the legislature as direction, as a directive of the legislative bodies in terms of creating parameters, also, which you would say is to his credit because what he said is: I recognize the limited role of the judiciary in how we make decisions. We should be dependent in certain areas on directions from the legislative body. In other words, what we rule on is the laws of this country which the legislative body and the executive branch determine. So all he is doing is deferring. It has nothing to do with whether DNA should be used to protect the life of somebody wrongly convicted and under threat of the death penalty.

The other quote we heard is it is impossible for him to have an open mind because he disagrees with the Senator from Massachusetts on an issue. Well, if we use that standard in this body, nothing would ever happen. If we disagree, then we can't have an open mind, we can't listen, we can't learn.

He won't come unbiased to the court. There is not one judge anywhere in this country who does not have biases. The question is can they separate their biases through the commitment of their oath of office to say: Here is our function. Here is how we function. Here is how we carry out our obligations.

Nobody meets the standard that the Senator from Massachusetts just set up. There would be nobody with whom I might have a philosophical difference that I could not raise that same example.

I am hopeful that the Members of this body will overwhelmingly endorse Jerome Holmes, the first African American to be appointed to the Tenth Circuit Court of Appeals. For the very reasons that Senator KENNEDY raised, Jerome Holmes disproves every one of those arguments.

It gives me great pleasure to yield to the senior Senator from Oklahoma at this time and to thank him in the proc-

ess and to also recognize and thank the President for the nomination of Jerome Holmes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first, let me thank the junior Senator from Oklahoma for the time he spent on the floor and the time he spent defending this man, not that he should ever need any type of defense against some of the accusations. I didn't realize that there is an article referred to where he stated: There are other ways to get minority students on college campuses besides handing out benefits based solely on skin color.

I am proud of it. I am also proud of the fact that I have known Jerome Holmes for some 5 years. Frankly, prior to this nomination, I made recommendations to the President that he consider this man because he is so incredibly qualified. We all agree he is a man of great character and undeniably fit for the bench. He has connections with both Oklahoma City and throughout Oklahoma, as well as the District of Columbia, a family history that goes back.

He was one of the prominent figures in the Oklahoma City bombing that took place 11 years ago. He was on the Oklahoma City bomb prosecution team, and I believe it was his distinguished service as assistant U.S. attorney that really began to set him apart in the legal field.

When asked about Mr. Holmes, most lawyers in Oklahoma begin their compliments with his work as U.S. assistant attorney in some public corruption cases in our State. He is someone who is willing to get in there and criticize and open up things other people aren't, a great characteristic and I think very important. But if I were to single out another one, I would say his chairmanship of City Rescue Mission in Oklahoma. This is their mission statement:

Serving the homeless both with help, hope, and healing in the spirit of excellence, under the call of Christ.

I have certainly made my position known for quite some time concerning him and how he limits his opinions to the facts, the litigants, and law before him in any case. At a time when our Nation is faced with the onslaught of judicial activism, he is a breath of fresh air and I believe he is a man of character and principle; that he will rule justly within the parameters of the law.

We have a resolution from the Oklahoma Bar Association. I have the former president of the American Bar Association, the president-elect of the local Federal bar association, I have the deans of all three of the Oklahoma law schools praising him in the highest of terms.

Judge Holloway, currently sitting on the Tenth Circuit, noted Mr. Holmes's compassion for people whose cases were before the court. John Richter, the U.S. attorney for the Western District of Oklahoma, who worked with Mr.

Holmes, can speak from the prosecutor's perspective and has said that Mr. Holmes is a man of integrity and character and possesses a rock-solid work ethic.

Mike Turpen is someone with whom Senator COBURN is very familiar. I don't believe in the years I have known Mike—and we have one of these very honest relationships. He is a very partisan Democrat. I don't think he has ever said anything nice about a Republican in his life except Jerome Holmes. Dan Webber—we have all these Democrats who are lined up without anyone dissenting from the idea that this guy is the perfect nominee to be confirmed to the Tenth Circuit.

Judge Ralph Thompson—I was elected to the State legislature with Judge Thompson. I considered him not just one of my closest personal friends, but he is certainly a judge of distinction in Oklahoma and has been for over 30 years. He ought to know a thing or two about judges. He said:

Mr. Holmes is dedicated completely to the rule of law, the proper role of the judiciary and to applying and interpreting the law without regard to personal views on given issues.

I don't think there is any judge, any Federal judge in the history of Oklahoma, who is more highly regarded than Judge Thompson. He also went on to affirm Mr. Holmes's honesty and compassion.

I have a letter from Pastor George Young, a member of the NAACP and the Urban League, who showed great character in voicing his support for Mr. Holmes. He said: I trust Mr. Holmes, and so in light of our differences I support his nomination. Now, he is one who doesn't agree with everything, every statement that Jerome Holmes has made, and yet he supports his nomination. He is for him. He is supporting him, head of the NAACP and the Urban League.

I talked with various attorneys in the State, and they all have good things to say about him. What I want to do, Mr. President, is submit for the RECORD a list of letters, if this has not been done by my colleague from Oklahoma.

It has been done, so it is already in the RECORD.

I thank my colleague for the time he spent in the Chamber. It happens I am on the Armed Services Committee, and we have a critical meeting that is going on even right now, so I haven't been able to be here, but my absence from the floor is no indication that I don't hold this person in the highest regard.

I worked hard in getting his name to the President, made that recommendation early on, and I believe he will be confirmed and history will reflect later on that he would be one of the greatest circuit judges, and I certainly encourage my colleagues to support his nomination to the Tenth Circuit.

I thank the Chair.

Mr. GRAHAM. Mr. President, I am very pleased to support the nomination

of Jerome Holmes to be a judge on the Tenth Circuit Court of Appeals. Due to a scheduling conflict, I am unable to be here to vote for Mr. Holmes, though I would have cast my vote to confirm him. In any event, with his stellar qualifications, I doubt my vote will be needed. President Bush made a great choice in nominating Mr. Holmes, and I look forward to great things from him during his tenure on the Tenth Circuit.

Mr. FEINGOLD. Mr. President, I will vote "no" on the nomination of Jerome M. Holmes to be a judge on the U.S. Court of Appeals for the Tenth Circuit, and I would like to take a minute to explain why I reached this decision.

This is an important nomination and should receive close scrutiny. Judges on the court of appeals have enormous influence on the law. Whereas decisions of district courts—a position Mr. Holmes has never held—are subject to appellate review, the decisions of the courts of appeals are in almost all cases final, as the Supreme Court agrees to hear only a very small percentage of the cases on which its views are sought.

I believe in certain longstanding touchstones of the qualifications needed for judicial nominees: legal competence, fairness, and the ability to approach issues with an open mind. We sometimes short-hand these qualities into a single phrase—a judicial temperament. In evaluating a nominee's judicial temperament, our goal is to have an evenhanded judiciary that hears the case before it and applies the law fairly and uniformly, rather than letting strong personal convictions override the facts or the law. We do this for a simple but fundamental reason, namely, that we want a highly qualified and independent judiciary that can command the respect and admiration of the American people.

In the nomination of Mr. Holmes, we have a nominee to one of our highest courts who has never served as a judge before. President Bush originally nominated Mr. Holmes to be a Federal district judge in Oklahoma earlier this year. Prior to this nomination, Mr. Holmes had been an assistant U.S. attorney in Oklahoma and in private practice. The Judiciary Committee was ready to consider that initial nomination—to determine the merits of Mr. Holmes serving in his first judicial position as a Federal district judge, a position with substantial responsibility.

But for some reason Mr. Holmes' nomination was upgraded to the U.S. Court of Appeals for the Tenth Circuit. Placing a nominee with no judicial experience on an appellate court makes it hard to evaluate the nominee's judicial temperament—his capacity to be fair and impartial.

With no judicial record to illuminate his views, we are left only with Mr. Holmes' words as a window into his judicial temperament. Those words are troubling and could lead a reasonable person to question his objectivity and

temperament. After the Supreme Court's nuanced affirmative action ruling, *Grutter v. Bollinger*, Mr. Holmes derided the Court for missing the "opportunity to drive the final nail in the coffin of affirmative action," and complained that "[t]he court did not go far enough: Affirmative action is still alive." He has referred to scholarship programs targeted at minority children as "morally offensive." He has called African-Americans leaders, on various occasions, "ideologically bankrupt" and suggested that their opposition to school vouchers is insincere. In a letter to a publication, Mr. Holmes flippantly dismissed a doctor's complaint that his colleagues had "negative reactions to his dreadlocks" as "naïve." He has even gone so far as to claim that efforts to address racial bias in jury selection actually harm the criminal justice system.

Mr. Holmes has even dismissed problems with the administration of the death penalty. In a 2004 speech, he said: "The statement society is sending—that certain conduct and the perpetrators of it deserve to die is not materially diminished by the fact that in the implementation of the death penalty mistakes are made." In response to my written questions regarding whether executing an innocent person was an acceptable mistake, Mr. Holmes responded by saying that "the criminal justice system should be administered in a manner that eliminates mistakes—to the extent it is humanly possible—and yields accurate outcomes." I do not think this is an acceptable answer to a fairly simple question. His statements suggest a rather cavalier approach to a very significant issue in contemporary criminal law.

Mr. Holmes' dismissive comments about affirmative action, school vouchers, and the death penalty were not off-hand remarks, or impassioned advocacy on behalf of a client. Nonetheless, Mr. Holmes, of course, urges us to set his earlier statements aside, and look to his assurances of his future impartiality as a judge. But Mr. Holmes did little to actually address the concerns of many members of the Judiciary Committee. Rather than discuss his previous comments openly and candidly—and take the opportunity to show why those comments might not reflect his actual thinking—he provided stock and unconvincing answers that he considers racism to be a "negative influence" in society and that he would follow Supreme Court precedent.

Mr. Holmes' actions in connection with his membership in the Men's Dinner Club of Oklahoma also suggest, rather than candor, a strategy of simple image control. Mr. Holmes, having been a member of this club that excludes women from membership, resigned from its membership on February 2, 2006 just 2 weeks prior to his initial nomination to be a district court judge. Mr. Holmes has defended this institution as, to his knowledge, not "practicing invidious discrimina-

tion." So what accounts for his resignation? His explanation—that "some might perceive the Men's Dinner Club as an improper organization"—suggests not a principled decision but a pure political and image calculation. Clearly, Mr. Holmes wishes to make this nomination as palatable as possible—and we should therefore take his assurances and stock answers with a grain of salt.

Mr. President, I am saddened that President Bush has once again proposed a judicial nomination that I cannot support, especially because Mr. Holmes would be the first African American to serve on the Tenth Circuit. But he has never served as a judge either on the Federal or State level—and his statements on a broad range of topics suggest concerns about his ability to provide impartial justice. And, by failing to explain his statements and views with candor, he missed a chance to show the Judiciary Committee that he has the deliberative and impartial reasoning needed to serve on an appellate court. We want a judiciary that the American people respect and admire as impartial. With no judicial record to examine and a history of troubling statements, Mr. Holmes has not shown that he will apply the law fairly. I will therefore vote "no."

Mr. LEVIN. Mr. President, I will oppose the nomination of Jerome Holmes to the Tenth Circuit Court of Appeals. Although I do not question the integrity or qualifications of Mr. Holmes to be a Federal circuit court judge, I do have serious questions about his ability to be an impartial jurist.

While all judges have and are entitled to their personal views and philosophies, a judge's decisions should not be controlled by an inflexible ideology. When a nominee's personal views will determine or dominate their judgements, such a nominee should not be put in a lifetime position on the Federal bench.

I am concerned by statements that he has made indicating insufficient sensitivity about the irreversible errors in the implementation of the death penalty. For example, in a presentation given by Mr. Holmes, he said that:

Like any human endeavor, there is a possibility of error . . . But the statement society is sending—that certain conduct and the perpetrators of it deserve to die—is not materially diminished by the fact that in the implementation of the death penalty mistakes are made.

Mr. Holmes' statement demonstrates a lack of understanding and concern about the death penalty and the way that erroneous convictions undermine a legal system.

Mr. Holmes has also sharply criticized affirmative action programs both before and after the Supreme Court rulings and those hardline views exhibited a lack of adequate respect for Supreme Court precedent. Although he told members of the Judiciary Committee that he would follow precedent,

he was vocal in his opposition to the Supreme Court's decision in *Grutter v. Bollinger*, criticizing the Court for missing an "important opportunity to drive the final nail in the coffin of affirmative action".

Because Mr. Holmes' statements do not reflect the objectivity necessary to serve in a lifetime appointment on the Federal bench, I cannot vote to confirm his nomination.

Mr. DURBIN. Mr. President, Jerome Holmes has made some troubling statements about affirmative action and the use of race in our society. He has said:

[Affirmative action] policies necessarily divide us along racial lines, and establish a spoils system based upon skin color. . . .

[t]he [Supreme] court upheld the affirmative action policy of the university's law school [in the 2003 Michigan case]. And in so doing, it missed an important opportunity to drive the final nail in the coffin of affirmative action. . . .

[r]ace-based scholarship programs . . . [are] constitutionally dubious and morally offensive racial classifications. . . .

Al Sharpton, Jesse Jackson and their ilk have little to offer me or other African-Americans in the 21st century. They continue to peddle a misguided and dangerous message of victimization. . . . As long as Jackson and company can successfully portray African-Americans as victims to the public at large, they'll be able to wring concessions out of educational institutions like Harvard University and corporate America. . . .

Mr. Holmes didn't make just an occasional comment against affirmative action. He has written over a dozen columns and op-ed pieces expressing his views on race and affirmative action.

I understand and accept that people in good faith can disagree about issues of race and the merits of affirmative action. It is a hard issue for many people and it stirs passions on both sides. But Mr. Holmes' statements are those of an ideological soldier. When it comes to affirmative action, Mr. Holmes seems to have open hostility, not an open mind.

In its letter of opposition to the Holmes nomination, the Leadership Conference on Civil Rights wrote: "Mr. Holmes has been a longstanding and outspoken critic of affirmative action, and his views raise serious questions about whether he would rule impartially and fairly in cases involving affirmative action."

I asked Mr. Holmes a simple question: Would you be willing to recuse yourself in all cases involving affirmative action?

Section 455 of title 28 of the United States Code states: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

This seems like a simple standard, and I share the belief of the Leadership Conference on Civil Rights that Mr. Holmes presents a clear case of someone whose impartiality would be questioned when it comes to affirmative action.

But Mr. Holmes doesn't see it that way. He said he would not recuse himself in affirmative action cases. He said he would be able to put his personal views aside and rule fairly on this issue. I doubt it. He harbors such hostility to affirmative action and such disdain for those who promote it—that I believe he will not have an open mind on this issue.

We have seen judicial nominee after judicial nominee come before this committee and pledge to put their personal views aside. But they rarely do. Chief Justice John Roberts and Justice Samuel Alito said they would put their personal views aside before they were confirmed, but they have not done so.

Just in the last 2 months, Chief Justice Roberts and Justice Alito have voted to limit the scope of the Voting Rights Act. They have voted to strip whistleblower protections for prosecutors. They have voted to restrict the right to privacy so that can police officers can enter a home without knocking. They have voted to expand the death penalty and to reduce the rights of the criminally accused. They have voted to roll back 30 years of environmental protection under the Clean Water Act. And in the case *Hamdan v. Rumsfeld*, Justice Alito embraced the view taken by John Roberts in the appellate court that the President should have unchecked power when it comes to using military commissions for enemy combatants.

There are very real and serious consequences when it comes to confirming judicial nominees.

I also think Mr. Holmes lacks good judgment because he didn't answer several questions that I asked him during the nomination process.

For example, I asked him if he believed the Supreme Court cases of *Roe v. Wade*, *Brown v. Board of Education*, and *Miranda v. Arizona* are consistent with the notion of "strict constructionism." Mr. Holmes refused to answer. He said: "it would be inappropriate for me to offer my personal views as to whether these decisions are consistent with a particular school of judicial decision-making."

Well, tell that to Deborah Cook. She was a nominee to the U.S. Court of Appeals for the Sixth Circuit a few years ago, and I asked her the same question. She answered it. I appreciated her candor, and I voted to confirm her.

I also asked Mr. Holmes to explain a statement he made about his judicial philosophy. In his Senate questionnaire, he wrote: "The judiciary should not . . . issu[e] rulings that go beyond the resolution of the dispute before the court to impose wide-ranging obligations on societal groups." I asked Mr. Holmes to provide some specific examples of what he meant by this. He refused to do so.

I do not believe Jerome Holmes deserves a lifetime position on the second highest court in the country.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I ask unanimous consent that the vote on the confirmation of Jerome Holmes be at 11:45 a.m. today with the remaining time under the majority.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. COBURN. I thank the Chair. I will not take all the time. I want to go back to what we said earlier this morning. If we are going to do a litmus test on judges, if we are going to say a judge cannot have an opinion outside of his role of a judge, we will destroy this country, whether it is a conservative litmus test or a liberal litmus test.

The fact is, as to Jerome Holmes, there have been very few appointments or nominees for this position at the appellate level that compare to the qualifications of Mr. Holmes. He also has the life experiences that will make him even more valuable on the court in terms of his compassion. He has experienced discrimination as an African male. He has risen to heights on his own, struggled—advanced degrees from Harvard, law degree from Georgetown, cum laude from his alma mater. There are very few people who will measure up to him.

Now, does he fit every litmus test? No, he doesn't fit every litmus test that I might have for a judge, but that is not the basis under which we should be considering judges.

He does, in fact, have the one key characteristic that is necessary, and it has been attested to by the people who know him. It has been attested to if you just heard him in the hearings. But of all those who have come to the floor to oppose him, members of the Judiciary Committee wouldn't even come and confront him with concern. They didn't come to the hearing. They didn't hear what he had to say. They had their minds made up.

The fact is, this is an excellent nomination. It is someone of whom we in our country should be proud, who recognizes the diversity of our country, and despite what the Senator from Massachusetts said, he can be entrusted with the future of this country, our Constitution, and the limited role of a judge in applying the law.

With that, Mr. President, I yield back the remainder of our time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of

Jerome A. Holmes, of Oklahoma, to be United States Circuit Judge for the Tenth Circuit?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER (Mr. BURR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 67, nays 30, as follows:

[Rollcall Vote No. 213 Ex.]

YEAS—67

Alexander	DeMint	McCain
Allard	DeWine	McConnell
Allen	Dole	Murkowski
Baucus	Domenici	Nelson (NE)
Bennett	Dorgan	Pryor
Bingaman	Ensign	Roberts
Bond	Enzi	Rockefeller
Brownback	Frist	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Burr	Hagel	Smith
Byrd	Hatch	Snowe
Carper	Hutchison	Specter
Chafee	Inhofe	Stevens
Chambliss	Isakson	Sununu
Coburn	Jeffords	Talent
Cochran	Johnson	Thomas
Coleman	Kyl	Thune
Collins	Landrieu	Vitter
Conrad	Lincoln	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	
Crapo	Martinez	

NAYS—30

Akaka	Harkin	Murray
Bayh	Inouye	Nelson (FL)
Biden	Kennedy	Obama
Boxer	Kerry	Reed
Cantwell	Kohl	Reid
Clinton	Lautenberg	Salazar
Dayton	Leahy	Sarbanes
Dodd	Levin	Schumer
Durbin	Menendez	Stabenow
Feingold	Mikulski	Wyden

NOT VOTING—3

Feinstein	Graham	Lieberman
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The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Senator from Nevada.

CHILD CUSTODY PROTECTION ACT

Mr. ENSIGN. Mr. President, I ask that the Senate now proceed to S. 403 under conditions of the consent agreement from last week.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 403) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I rise to discuss the Child Custody Protection Act which will protect the rights of our Nation's parents and their children's well-being. Speaking as a father of three young children, including a daughter, I understand how difficult the challenge of raising children can be. In most schools across the country, our children cannot go on a field trip, take part in school activities, or participate in sex education without a signed permission slip. An underage child cannot even receive mild medication such as aspirin unless the school nurse has a signed release form. Some States even require parental permission to use indoor tanning beds. Nothing, however, prevents this same child from being taken across State lines in direct disobedience of State laws for the purpose of undergoing a surgical, life-altering abortion.

The bill before us, the Child Custody Protection Act, makes it a Federal offense to knowingly transport a minor across a State line for the purpose of an abortion in order to circumvent a State's parental consent or notification law. It specifies that neither the minor transported nor her parent may be prosecuted for a violation of this act.

It is important to note that this legislation does not supersede, override, or in any way alter existing State parental involvement laws. It does not impose any Federal parental notice or consent requirement on any State that does not already have a parental involvement law in place. This bill merely addresses the interstate transportation of minors, sometimes by a predatory older male or his parents, in order to circumvent valid existing State laws that require parental notification or consent. This bill goes a long way in strengthening the effectiveness of State laws designed to protect parents and their young daughters from the health and safety risks associated with secret abortions.

An overwhelming number of States have recognized that a young girl's parents are the best source of guidance and knowledge when making decisions regarding serious surgical procedures such as abortion. Forty-five States have adopted some form of parental notification or consent, proving the widespread support for protecting the rights of parents across America. The people who care the most for a child should be involved in these kinds of health care decisions. If there is aftercare needed, the parents should be fully informed in order to care for their young daughter.

An overwhelming majority of Americans support parental consent laws. In fact, most polls show that consent is favored by almost 80 percent of the American people. These numbers do not lie. By the way, these are people who call themselves pro-choice and pro-life. Well over a majority of even

pro-choice people support parental notification or parental consent laws. The American people agree that parents deserve the right to be involved in their minor children's decisions. In many cases, only a girl's parents know her prior medical and psychological history, including allergies to medications and anesthesia.

The harsh reality is our current law allows for parents to be left uninformed about their underage daughter's abortion which can be devastating to the physical and mental health of their child. Take the case of Marcia Carroll from Pennsylvania. On Christmas Eve 2004, her daughter informed her she was pregnant. After listening to her daughter's story, Ms. Carroll assured her that they would handle this as a family and would support any decisions she decided to make. They scheduled appointments with both doctors and counselors and discussed all options available. Ms. Carroll purposely allowed her daughter to speak alone with the professionals so that her daughter felt comfortable to speak her mind. After all the advice and counsel, her daughter decided to have the baby and to raise it, a decision which the family fully supported.

Following her decision, despite their knowledge of her family's love and support, her boyfriend's family began to harass her and threaten that she could not see her boyfriend unless she had an abortion. Ms. Carroll was so concerned about their behavior, she called the police and even went so far as to contact a nearby abortion clinic to ensure that parental consent would be required before an abortion would be allowed. Pennsylvania's law requires that anyone under the age of 18 have consent of a parent before an abortion can be performed. Unfortunately, other States nearby do not have the same protections.

Shortly after, Ms. Carroll sent her daughter off to school, thinking she would be safe. Imagine yourself in the same position. Instead, her boyfriend and his family met her at the bus stop, bought them a train ticket, and sent the children to New Jersey, where other family members picked them up and took them to an abortion clinic. Despite her tears and desires to keep the baby, her boyfriend's family coerced her by telling her they would leave her in New Jersey with no way to get home. They planned, paid for, and threatened her into agreeing to an abortion. After the abortion, they dropped her off blocks from her house with no regard to her mental or physical well-being. Ms. Carroll called the local police department only to be told that there was nothing that could be done. This poor young girl, whose family was committed to loving her and respecting her decision, had her life forever altered by adults who never considered her wishes or the consequences such a decision would have on her life.

Parental notification serves another vital purpose: ensuring increased protection against sexual exploitation of